

CV 03 1068

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
JAIPERSAUD BIRBAL, SOOKDAI BIRBAL, A [REDACTED] N CLERK'S OFFICE  
B [REDACTED] infant by parents and natural guardian JAIPERSAUD DISTRICT COURT  
BIRBAL and SOOKDAI BIRBAL, A [REDACTED] B [REDACTED] infant by 2003  
parents and natural guardian JAIPERSAUD BIRBAL and  
SOOKDAI BIRBAL, A [REDACTED] B [REDACTED] infant by parents and  
natural guardian JAIPERSAUD BIRBAL and SOOKDAI BIRBAL,

GLEESON, J.

LEVY, M.J.

COMPLAINT AND  
JURY DEMAND

Plaintiff(s),

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT and DETECTIVE CHRISTOPHER T. DREW,  
SHIELD NO# 6712, individually and in his official capacity as a  
New York City Police Officer, "JOHN DOES", police officers  
and non-uniform employees of the New York City Police  
Department, the identity and number of whom is presently  
unknown; individually and in their official capacity as New York  
City Police Officers and employees.

Defendant(s)

-----X  
Plaintiffs Jaipersaud Birbal, Sookdai Birbal, [REDACTED] infant by parents and natural  
guardian Jaipersaud Birbal and Sookdai Birbal, [REDACTED] infant by parents and natural guardian  
Jaipersaud Birbal and Sookdai Birbal, [REDACTED] infant by parents and natural guardian  
Jaipersaud Birbal and Sookdai Birbal, by and through their attorneys, Drummond & Crawford, PC  
state as follows:

INTRODUCTION

1. This is an action seeking compensation for the unconstitutional, tortuous acts and conducts of  
the defendants which resulted in the false arrest, false imprisonment, intentional and

negligent infliction of emotional distress on the above-named plaintiffs.

2. On March 7, 2002, at approximately 12:30 am while the plaintiffs were asleep inside their home at 127-24, 102 Road, South Ozone Park, Queens, New York, Detective Christopher T. Drew, of the 105 Squad, Shield Number 6712, and several unknown persons, who, based upon information and belief, are members of the New York City Police Department, acting in concert with each other, without a search and/or arrest warrant and without permission and authority and without any reasonable basis, kicked down the door to plaintiffs' home, breaking the locks, and forcibly entered therein.
3. At the above referenced time, place and date, plaintiff Sookdai Birbal, was sleeping in her bedroom with her newborn child, plaintiff [REDACTED]. The bedroom door was locked and/or closed when the police kicked down the door and stormed into the bedroom ordering Sookdai Birbal to place her hands over her head and against her will forced her into the living room. At this time, Sookdai Birbal was dressed in a transparent nightgown where her underpants and naked breasts, and other areas of her body, were completely visible to the male police officers. Sookdai Birbal repeatedly asked, pleaded and begged the police officers to allow her to cover herself and they refused her repeated request. Sookdai Birbal further repeatedly asked, pleaded and begged the police officers to allow her to use the bathroom and they again refused her request.
4. While the police were forcing their way into the marital bedroom where Sookdai Birbal was sleeping, plaintiff Jaipersaud Birbal was asleep in the children's bedroom in the same bed, with seven years old [REDACTED] and four years old [REDACTED] laying asleep on either side of him. While Jaipersaud Birbal was consoling his children, having been

awakened and frightened by the screams of their mother and the noise of the police, the police forced their way into the children's bedroom and pried Jaipersaud Birbal from the grasps of his crying children and threw him to the floor face down. In front of his crying children, the police repeatedly kicked and assaulted Jaipersaud Birbal, and with knees pressing his body to the floor, they handcuffed him and dragged him to the living room leaving his two children, [REDACTED] and [REDACTED] crying and screaming in their room.

5. While in the living room, the police yelled at Sookdai Birbal stating that she is harboring a criminal, that her children will be taken away from her and that they might arrest her. Further, the police maliciously and intentionally made remarks to Jaipersaud and Sookdai Birbal based upon the color of their skin, their accent and their physical attributes and features blaming them and "their people" for the events at the World Trade Center on September 11, 2001.
6. While the police were in the living room with Jaipersaud Birbal handcuffed and laying face down, [REDACTED] entered the living room crying, begging the police officers to allow her mother to take her to the bathroom. In refusing the young girl's cry, a male officer escorted her to the bathroom. Thereafter, the police, again without a search and/or arrest warrant ransacked and further invaded the privacy of the plaintiffs' home by searching throughout the house and their personal belongings causing damage to furniture and other household and personal items.
7. Thereafter, Jaipersaud Birbal was transported to the 105 Detective Squad where he was locked in a cell for approximately five-six hours before he was interrogated for over four

hours concerning an alleged attempted murder, assault and tampering with a witness, one Abraham Kamaluddin. Based upon information supplied in a Queens County Criminal Court Complaint under Docket Number 2002QN009247, it was alleged that on February 23, 2002, Abraham Kamaluddin was assaulted by five individuals. Based upon information and belief, on March 6, 2002, Detective Drew from the 105 Detective Squad showed Abraham Kamaluddin a single photograph—a photograph of Mr. Jaipersaud Birbal, whom Abraham Kamaluddin identified as one of his assailants. Based upon information and belief, Detective Drew then transported or caused Abraham Kamaluddin to arrive at Mr. Birbal's residence and together awaited Mr. Birbal to leave his house at which time Abraham Kamaluddin identified Jaipersaud Birbal as the man in the photograph Detective Drew showed him. It was based upon this unconstitutional and suggestive identification procedure, without a search and/or arrest warrant and without exigent circumstances, that the police forcibly entered the plaintiffs' home and arrested Mr. Birbal in the early morning hours of March 7, 2002.

8. In an attempt to coerce a confession, in the early morning hours of March 7, 2002, the police first promised to release Mr. Birbal so he could return to his family. When Mr. Birbal denied any knowledge and/or involvement in the alleged incident, the police then threatened to arrest his wife and take away his children. Mr. Birbal maintained his innocence and at that time, offered the police information as to his whereabouts on the dates, times and places of the alleged crimes. Specifically, Jaipersaud Birbal gave the police information that on February 23, 2002, when it was alleged that Mr. Birbal assaulted the Abraham Kamaluddin, he was in the company of two other individuals at Aqueduct Racetrack. Additionally, on

March 6, 2002, when it was alleged that Mr. Birbal confronted Mr. Abraham Kamaluddin, Mr. Birbal was with Mr. Somraj, a retired Lieutenant of the New York City Police Department. The police deliberately and intentionally failed to document and investigate the foregoing information provided to them by Mr. Birbal. Instead, the police credited the identification and the allegations of Abraham Kamaluddin and acting in concert with the Queens County District Attorney's Office, charged Mr. Birbal with the following crimes:

PL 110/125.25-1	Attempted Murder in the Second Degree
PL 120.10-1	Assault in the First Degree
PL 120.05-2	Assault in the Second Degree (2 Counts)
PL 215.16-1	Intimidating a victim or witness in the Second Degree
PL 215.12-1	Tampering with a witness in the Second Degree
PL 215.11-1	Tampering with a witness in the Third Degree (2-Counts).
PL 265.01-2	Criminal Possession of a Weapon in the Fourth Degree (2 Counts).

9. Based upon this false information provided by Detective Drew and Abraham Kamaluddin, on or about March 8, 2002, the Queens County District Attorney's Office persuaded the presiding judge at Mr. Birbal's arraignment to deny any bail and remand Mr. Birbal to the custody of the New York City Department of Corrections. Thereafter, Mr. Birbal was confined to Riker's Island. On March 26, 2002, Jaipersaud Birbal, by Writ of Habeas Corpus petitioned the Supreme Court of the State of New York, Queens County, to release him or set reasonable bail based upon the exculpatory information outlined and detailed in the Writ of Habeas Corpus; a copy of which was served upon the Queens County District Attorney's Office. The Writ of Habeas Corpus, detailed the very same information that Mr. Birbal previously provided Detective Drew and the New York City Police Department the night he was arrested and interrogated; the same information upon which the police failed to

investigate. Based upon this exculpatory information and the unconstitutional and impermissibly suggestive identification procedure conducted by Detective Drew and the New York City Police Department, the presiding judge granted the petition and set bail.

10. Despite being provided with substantial and credible exculpatory information, the District Attorney's Office, the New York City Police Department and Detective Drew, failed to timely investigate, but instead vigorously prosecuted Mr. Birbal; causing the plaintiffs to expend time and fees for both legal representation and a private investigator to convince the Queens County District Attorney's Office, the New York City Police Department and Detective Drew that he was indeed, innocent of all the allegations listed in the Criminal Court Complaint.
11. On October 30, 2002, after repeated court appearances, based upon the very same information that was first provided to the New York City Police Department and to Detective Drew during the early morning hours of March 7, 2002, the Queens County District Attorney's Office petitioned the court to dismiss entire case against Mr. Birbal. The presiding Judge, granted the petition and dismissed the case with prejudice.

### **JURISDICTION**

12. This action is brought pursuant to 42 U.S.C. Sections 1981, 1983, 1985, 1986, and 1988; and the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, the Constitution and the laws of the of the State of New York. Jurisdiction is founded upon 28 U.S.C. Sections 1331, 1343(1-4) and 2202. Plaintiffs further invoke the supplemental jurisdiction of this Court to adjudicate pendant pendant state law claims pursuant to 28

U.S.C. Section 1367.

13. Venue is proper in this district under 28 U.S.C. Section 1391(b).
14. Plaintiffs Jaipersaud Birbal, Sookdai Birbal, Amanda Birbal, infant by parents and natural guardian Jaipersaud Birbal and Sookdai Birbal, Andrew Birbal infant by parents and natural guardian Jaipersaud Birbal and Sookdai Birbal, Amrita Birbal infant by parents and natural guardian Jaipersaud Birbal and Sookdai Birbal.
15. Defendant, City of New York (City) is a municipal corporation with the State of New York and the public employer of the other police officers and non-uniform personnel at the Queens County District Attorney's Office.
16. Defendant, New York City Police Department (NYPD), is an agency of the City of New York, existing and operating by virtue of the laws of the State of New York and the City of New York.
17. In addition to the facts alleged in the following subparagraphs, the following defendants are all sued in their individual and official capacities and all acted within the scope of their employment and under color of state law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the State of New York and/or the City of New York:
  - a. Defendant, Christopher T. Drew, Shield Number 6712, at all relevant times, was a police officer of the New York City Police Department;
  - b. Defendants, John Does, at all relevant times, were police officers of the defendant, New York City Police Department, and/or non-uniform employees of the City of New York and/or the New York City Police Department, the number and identify of

whom are presently unknown.

### **NOTICE OF CLAIM**

18. Plaintiffs, in furtherance of their state causes of action, filed timely notice of claim against the City of New York in compliance with General Municipal Law Section 50.
19. More than 30 days have elapsed since service of said notice and the City has failed to pay or adjust the claim.
20. This action has been commenced within one year and ninety days after the happening of the events upon which these claims arise.

### **FACTUAL AND GENERAL ALLEGATIONS**

21. During the early morning hours of March 7, 2002, plaintiffs were asleep inside their home located at 127-24, 102 Road, Richmond Hill, Queens, New York when Detective Christopher T. Drew, of the 105 Squad, Shield Number 6712, and unknown officers of the New York City Police Department, without a search and/or arrest warrants, without a court order and without exigent circumstances, and without permission and/or authority and without any reasonable basis kicked down the door to plaintiffs' home, forcibly entered and falsely arrested plaintiff Jaipersaud Birbal.
22. At the above referenced time, place and date, plaintiffs Sookdai Birbal was sleeping in the marital bedroom with her newborn child, plaintiff, [REDACTED] while plaintiff Jaipersaud Birbal was asleep in the same bed with his two other children, plaintiffs, [REDACTED] and [REDACTED] when Detective Drew and the other police officers kicked down the locked door to the marital bedroom and stormed into the room awakening and frightening plaintiffs Sookdai Birbal and [REDACTED]



23. Detective Drew and the other police officers screamed at plaintiff Sookdai Birbal to place her hands over her head and forced her against her will into the living room while she was only dressed in a transparent nightgown with her underpants and naked breast and other areas of her body were visible to Detective Drew and the other police officers; all of whom were of the male gender.
24. Despite the repeated pleas of plaintiff Sookdai Birbal to Detective Drew and the other officers to allow her to cover herself, as well as to allow her to use the bathroom, Detective Drew and the other police officers repeatedly refused her requested and forced her against her will to stay in the living room.
25. Thereafter, Detective Drew and the other police officers stormed into the children's bedroom and dragged plaintiff Jaipersaud Birbal out of bed and out of the hands of his crying children, plaintiffs [REDACTED] and [REDACTED]; and in front of the children repeatedly kicked and assaulted Jaipersaud Birbal, throwing his body face down onto the floor, and with their knees pressing his body further into the floor, Detective Drew and the other police offices handcuffed and dragged plaintiff, Jaipersaud Birbal, against his will, into the living room.
26. While in the living room, Detective Drew and the other police officers falsely accused plaintiff, Sookdai Birbal of harboring a criminal, threatened to arrest her and take her children away from her.
27. While in the living room, Detective Drew and the other police officers with racial epithets, maliciously and intentionally made remarks blaming plaintiffs, Jaipersaud Birbal and Sookdai Birbal, based upon the color of their skin, their accents and their physical features; to wit: their race, and "their people" for the tragic events at the World Trade Center on

September 11, 2001.

28. During the course of the foregoing events, plaintiff [REDACTED] entered the living room, hysterically crying, and witnessed her mother partially clothed and again, witnessed her father handcuffed, face down on the floor, begged Detective Drew and the other officers to allow her mother to accompany her to the bathroom.
29. In denying the child's cry, upon information and belief, one of the male officers escorted the frightened child to the bathroom where the child was forced to use the bathroom in the officer's presence.
30. Thereafter, again without a search and/or arrest warrant, and without permission and/or authority and/or consent, Detective Drew and the other officers ransacked and pillaged plaintiffs' home causing damage to the plaintiffs' furniture, household and personal items.
31. Detective Drew and the other police officers then transported plaintiff Jaipersaid Birbal, against his will, to the 105 Squad, locked him in a cell, against his will, for approximately six hours, and thereafter interrogated plaintiff Jaipersaud Birbal for approximately over four hours concerning an alleged attempted murder and assault.
32. Based upon the Queens County Criminal Court complaint, Docket Number 2002QN009247, Abraham Kamaluddin alleged that on February 23, 2002, he was assaulted by five individuals.
33. Based upon information and belief, on March 6, 2002, Detective Drew showed Abraham Kamaluddin a single photograph—a photograph of Mr. Jaipersaud Birbal, whom Abraham Kamaluddin identified as one of the five persons who allegedly assailed him.
34. Detective Drew then transported and/or caused Abraham Kamaluddin to arrive at the

plaintiffs' residence and together waited for plaintiff Jaipersaud Birbal to leave his house and at which time Abraham Kamaluddin plaintiff Jaipersaud Birbal as the man in the single photograph that Detective Drew showed him on March 6, 2002.

35. During the course of his interrogation at the 105 Squad in the early morning hours of March 7, 2002, Detective Drew and the other police officers attempted to coerce and/or force plaintiff Jaipersaud Birbal to falsely admit that he had assaulted and/or was involved in the alleged assault of Abraham Kamaluddin. First, Detective Drew and the other police officers promised to release plaintiff Jaipersaud Birbal in exchange for his admission of involvement in the alleged assault on Abraham Kamaluddin.
36. In maintaining his innocence since the beginning of the within ordeal, plaintiff Jaipersaud Birbal in vehemently denying any involvement in the alleged offense, detailed his whereabouts on the dates, times and places of the alleged assault on Abraham Kamaluddin.
37. Specifically, on February 23, 2002, when it was alleged that plaintiff Jaipersaud Birbal assaulted Abraham Kamaluddin, plaintiff Jaipersaud Birbal was at Aqueduct Race Track with two other individuals.
38. Further, on March 6, 2002, when it was also alleged that plaintiff Jaipersaud Birbal confronted Abraham Kamaluddin, plaintiff was in the company of Mr. Somraj, a retired Lieutenant of the New York City, Police Department.
39. Detective Drew and the other police officers intentionally and maliciously failed to properly document and/or investigate the foregoing information provided to them by plaintiff, Jaipersaud Birbal.
40. Acting in concert with the Queens County District Attorney's Office, Detective Drew and the

other police officers, falsely and with deliberate indifference to the constitutional rights of the plaintiffs, credited the allegations and the unconstitutionally suggestive identification by Abraham Kamaluddin and charged plaintiff, Jaipersaud Birbal with crimes of attempted murder, assault and other charges.

41. On March 8, 2002, based upon the false information provided by Detective Drew, the other police officers and Abraham Kamaluddin, the Queens County District Attorney's Office, convinced the presiding judge at plaintiff Jaipersaud Birbal's arraignment to deny any bail and remand plaintiff Jaipersaud Birbal to the custody of the New York City Department of Corrections.
42. As a result of the foregoing, plaintiff, Jaipersaud Birbal was confined to Riker's Island against his will.
43. On or about March 26, 2002, by Writ of Habeas Corpus, plaintiff Jaipersaud Birbal petitioned the Supreme Court of the State of New York, Queens County for release or for reasonable bail to be set.
44. In support of plaintiff's petition, the same credible exculpatory information, previously provided to Detective Drew and the other police officers on the date of his arrest and interrogation, was outlined and detailed in the Writ of Habeas Corpus; a copy of which was first served on the Queens County District Attorney's Office and thereafter, served upon the court.
45. Based upon this credible exculpatory information and the unconstitutionally suggestive identification by Abraham Kamaluddin and the conduct of Detective Drew and the other police officers, the court granted plaintiff, Jaipersaud Birbal's petition and set bail.

46. Despite the credible exculpatory information provided to Detective Drew and the other police officers and the Queens County District Attorney's Office, the defendants named herein, deliberately, intentionally, willfully and negligently failed to timely, adequately and properly investigate, but instead wrongfully continued to prosecute plaintiff Jaipersaud Birbal.
47. As a result of the malicious, intentional, false arrest, false imprisonment and prosecution of plaintiff Jaipersaud Birbal on the aforementioned charges, plaintiffs were forced to expend time and monies for legal representation, as well as for a private investigation to convince the defendants herein named that plaintiff Jaipersaud Birbal was indeed, innocent of all of the charges.
48. After repeated court appearances, on October 30, 2002, based upon the very same exculpatory information which was first provided to Detective Drew and the other officers during plaintiff Jaipersaud Birbal false arrest and interrogation, the Queens County District Attorney's Office, petitioned the court to dismiss the case against plaintiff, Jaipersaud Birbal in its entirety.
49. Based upon the exculpatory evidence, the presiding judge granted the petition and dismissed and sealed the case with prejudice.
50. The actions of all individual defendants were performed within the scope of their employment and authority, and for whose acts the defendants, City of New York and the New York City Police Department are liable under the doctrine of respondeat superior.
51. The actions of the defendants officers violated the plaintiffs clearly established rights under the First, Fourth, Fifth, Eighth, Thirteenth and Fourteenth Amendments of the Constitution and were the direct and proximate cause of the physical and psychological injuries suffered

by all the plaintiffs.

52. The actions of all defendants were intentional, malicious, and in bad faith, thus giving rise to punitive damages as to all defendants with the exception of the municipality.

### **DAMAGES**

53. As a direct and proximate result of the said acts of the defendants, the plaintiffs suffered the following injuries and damages:

- a. Violation of their rights under the First, Fourth, Fifth, Eighth, Thirteenth and Fourteenth Amendments to the Constitution.
- b. Loss of physical liberty;
- c. Physical injuries, pain and suffering, extreme fear, emotional and psychological trauma, mental anguish, loss of enjoyment of life, emotional distress (both intentional and negligent), loss of services, requiring the expenditure of money for treatment expected to last the rest of their lives.
- d. Economic damages, including loss of income.
- e. Humiliation, embarrassment, and injury to reputation.

The physical, emotional, psychological and economic consequences of the defendants' actions continue to date, and upon information and belief, will continue into the future.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **42 U.S.C. § 1983- UNREASONABLE AND EXCESSIVE FORCE**

54. Paragraphs 1-53 are incorporated by reference as though fully set forth.

55. By their conduct, all of the defendants named herein, under color of law, deprived plaintiffs of their constitutional rights to be free from excessive and unreasonable force.
56. Plaintiffs claim damages for the injuries set forth above.

## **COUNT II**

### **42 U.S.C. § 1983- FALSE ARREST AND FALSE IMPRISONMENT**

57. Paragraphs 1-56 are incorporated by reference as though fully set forth.
58. By their conduct under the color of law, defendants New York Police Detective Christopher T. Drew and the other police officers deprived plaintiffs of their constitutional rights to be free from false arrest and false imprisonment and unlawful detention.
59. Plaintiffs claim damages for the injuries set forth above.

## **COUNT III**

### **42 U.S.C. § 1983-FIRST, FOURTH, AND FOURTEENTH AMENDMENT VIOLATIONS**

60. Paragraphs 1-59 are incorporated by reference as though fully set forth.
61. By defendants' conduct under the color of law, the defendants New York Police Detective Christopher T. Drew and the other police officers deprived Plaintiffs of their First Amendment right to seek redress in the courts, their Fourth Amendment right against unreasonable search and seizure, and their Fourteenth Amendment right to due process and equal protection under the law.
62. The conduct of the each and every defendant was motivated by racial animus and by their desire to injure, oppress, threaten and intimidate plaintiffs because of their race.
63. Each and every defendants' racial animus was expressed in racially insulting remarks directed at plaintiffs.

64. Plaintiffs claim damages for the injuries set forth above.

#### **COUNT IV**

##### **42 U.S.C. § 1983-CONSPIRACY**

65. Paragraphs 1-64 are incorporated by referenced as though fully set forth.
66. The individual defendants, under the color of law, conspired with each other to undertake a course of conduct to injure, oppress, threaten and intimidate plaintiffs in the free exercise and enjoyment of the rights and privileges and equal protection of the law secured to their Constitution, including the rights to be free to associate and speak freely and to have access to and seek redress from the courts.
67. In furtherance of this conspiracy to cover up the acts perpetrated by the Christopher T. Drew and the other police officers to intimidate and coerce plaintiffs, defendants engaged in the following:
- a) Discouraging plaintiffs from speaking truthfully to investigators and prosecutors and intimidating and harassing them to answer investigators' and prosecutors' questions without consulting with an attorney.
68. Plaintiffs claim damages for injuries set forth above.

#### **COUNT V**

##### **42 U.S.C. § 1983-SUPERVISORY LIABILITY**

69. Paragraphs 1-68 are incorporated by reference as though fully set forth.
70. Defendant Detective Drew, was at all relevant times, a supervisor to the police officers named herein as "John Does" all police officers of the defendant, the New York City Police Department, with oversight responsibility for said officers. The defendant, the New



York City Police Department was at all relevant times, responsible for the hiring, training, instruction, supervision and discipline of Detective Drew and the other police officers who falsely accused and falsely arrested plaintiff Jaipersaud Birbal, and who falsely imprisoned and violated the constitutional rights of all plaintiffs.

71. The defendants knew or, in the exercise of due diligence, would have known that the conduct of defendant Detective Drew and the other officers against plaintiffs was likely to occur.
72. It is believed that these defendants failed to take preventive and remedial measures to guard against the false arrest of plaintiff Jaipersaud Birbal, and the false imprisonment and violation of the constitutional rights of all plaintiffs. Had they taken appropriate action, plaintiffs the constitutional violations visited upon the plaintiffs would not have occurred.
73. The failure of the defendants, the City of New York and the New York City Police Department, in failing to screen, supervise, train and discipline defendants Detective Drew and the other police officers, caused injury to the plaintiffs as a result of being threatened, harassed, falsely accused, falsely arrested, and falsely imprisoned; the intentional misconduct which directly caused the deprivations suffered by all plaintiffs.
74. By their conduct under the color of law, and in their supervisory position, the defendants, the City of New York, the New York City Police Department, and Detective Drew, deprived plaintiffs of their constitutional rights, including their rights to be free from excessive and unreasonable force, their rights to be free from unlawful arrest, imprisonment and detention, and, their rights to equal protection under the law.
75. Plaintiffs claims damages for the injuries set forth above.

#### **COUNT VI**

**42 U.S.C. § 1983-MONELL CLAIM**

76. Paragraphs 1-75 are incorporated by reference as though fully set forth.
77. Prior to March 7, 2002, the City of New York and the New York City Police Department, through its official policy-makers, developed and maintained policies and customs exhibiting deliberate indifference to the constitutional rights of its citizens; the very policies and customs which caused the violation of plaintiffs' rights.
78. It was the policy and/or custom of the City of New York and the New York City Police Department, to inadequately and improperly investigate civilian complaints of police misconduct, including allegations of excessive force, false arrest, harassment and racial bias. Instead, acts of racism and harassment were tolerated by the City of New York and the New York City Police Department. The City of New York and the New York City Police Department have substantially failed to investigate and intentionally and with deliberate indifference, failed to discipline transgressors.
79. It was the policy and/or custom of the City of New York and the New York City Police Department to inadequately and improperly screen and hire police officers who are known or, with reasonable diligence, should be known to possess violent and racist. The City of New York and the New York City Police Department have substantially failed to screen and reject such officers.
80. It was the policy and/or customs of the City of New York and the New York City Police Department inadequately and improperly to train and supervise police officers who are known, or with reasonable diligence should be known, to be actively engaged in police

misconduct by, among other actions, failure to investigate, and thereby failing to discourage constitutional violations on the part of its officers, as those outlined within.

81. The City of New York and the New York City Police Department have been on notice for years that racism, harassment, and violations of citizens' constitutional rights are widespread and that particular reforms need to be implemented.
82. I t was the policy and/or custom o f t he City of New York and the New York City Police Department to inadequately screen, hire, train, supervise and discipline their officers, including those named herein as defendants, thereby failing to discourage constitutional violations on the part of their police officers.
83. The City of New York and the New York City Police Department, as a matter of policy and practice, has, with deliberate indifference, failed adequately to screen for hiring and retention and to discipline, train, or otherwise supervise police officers concerning the rights of citizens, thereby causing the defendant officers in this case to engage n the unlawful conduct described above.
84. The foregoing acts, omissions, systemic deficiencies and deliberate indifference to the danger of harm to citizens like plaintiffs herein, and the need for more or different training and discipline are policies, practices and customs of the City of New York and the New York City Police Department and have caused their police officers, including Detective Drew and the other officers in this case, to believe that they can violate the rights of citizens with impunity, with foreseeable results that officers are more likely to violate the constitutional rights of citizens.

85. As a direct and proximate result of the City of New York and the New York City Police Department's deliberate indifference, defendants violated each and every of plaintiffs' rights for which they suffered substantial damage.

**COUNT VII**

**42 U.S.C. §1986 ACTION FOR NEGLECT TO PREVENT**

86. Paragraphs 1-85 are incorporated by reference as though fully set forth.
87. On information and belief, Detective Drew and the other police officers, named herein as "JOHN DOES", had knowledge and information that they did not have an arrest and/or search warrant, exigent circumstances, reasonable belief, permission and/or authority to enter and remain in plaintiffs' home, falsely imprison plaintiffs, and falsely arrest plaintiff Jaipersaud Birbal. Detective Drew and the other police officers, each individually and collectively, had the power and authority to prevent the others individually and collectively from entering and remaining in plaintiffs' home, falsely imprisoning plaintiffs, and falsely arresting plaintiff Jaipersaud Birbal, and to prevent the continued malicious and willful prosecution of plaintiff Jaipersaud Birbal, and, willfully and/or negligently neglected and refused to prevent the others from said acts.

**COUNT VIII**

**42 U.S.C. §1983-FAILURE TO INTERCEDE**

88. Paragraphs 1-87 are incorporated by reference as though fully set forth.
89. By their conduct under the color of state law, it is believed that Detective Drew and the other officers, each individually and collectively, had opportunities to intercede on behalf of

plaintiffs to prevent the unreasonable and excessive force, the false arrest, false imprisonment, unlawful detention, and violations of the constitutional rights of all plaintiffs, but due to defendants' intentional conduct and/or deliberate indifference, declined or refused to do so.

90. As a direct and proximate result, plaintiffs suffered the injuries and damages set forth and described above.

### **PENDENT STATE CLAIMS**

91. Paragraphs 1-90 are incorporated by reference as though fully set forth.
92. The individual defendants, under color of law, conspired with each other to undertake a course of conduct to impede the due course of justice in New York State, with the intent of denying Plaintiff Jaipersaud Birbal the equal protection of the laws.
93. By their actions, as set forth above, defendants committed unlawful detention and false imprisonment, intentional infliction of emotional distress, reckless infliction of emotional distress, outrage conduct, negligence, gross negligence, and negligent hiring, retention and supervision under the laws of the State of New York.
94. At all times herein mentioned, the unlawful and wrongful detention and imprisonment of Plaintiff Jaipersaud Birbal was without right or probable cause, and was forcible and against his will.
95. All of the foregoing occurred without fault or provocation on the part of Mr. Birbal.
96. At all relevant times, defendant Detective Drew and John Does's, were employees of the City of New York and the New York City Police Department.
97. Consequently, the City of New York is liable under the doctrine of *respondeat superior* for their tortious actions.

98. This Court has pendent jurisdiction to hear and adjudicate said claims.

**WHEREFORE**, plaintiffs Jaipersaud Birbal, Sookbai Birbal, [REDACTED] and

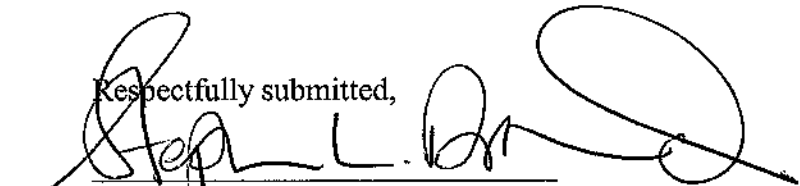
[REDACTED] request the following relief jointly and severally as against all of the defendants:

1. Award compensatory damages in an amount to be determined at trial;
2. Award punitive damages in an amount to be determined at trial;
3. Disbursements, costs and attorneys' fees; and
4. For such other further relief to this Court may seem just and proper.

**PLAINTIFFS DEMAND TRIAL BY JURY**

Date: Valley Stream, New York  
March 4, 2003

Respectfully submitted,



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To:  
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Corporation Counsel  
THE CITY OF NEW YORK and NEW YORK CITY  
POLICE DEPARTMENT  
100 Church Street  
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Index No.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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JAIPERSAUD BIRBAL, SOOKDAI BIRBAL, [REDACTED]  
[REDACTED] infant by parents and natural guardian JAIPERSAUD  
BIRBAL and SOOKDAI BIRBAL, [REDACTED]  
infant by parents and natural guardian JAIPERSAUD BIRBAL  
and SOOKDAI BIRBAL, [REDACTED] infant by parents  
and natural guardian JAIPERSAUD BIRBAL and SOOKDAI BIRBAL,

Plaintiff(s),

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT and DETECTIVE CHRISTOPHER T. DREW,  
SHIELD NO# 6712, individually and in his official capacity as  
a New York City Police Officer, "JOHN DOES", police officers  
and non-uniform employees of the New York City Police  
Department, the identity and number of whom is presently  
unknown; individually and in their official capacity as  
New York City Police Officers and employees.

Defendant(s)

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**SUMMONS IN CIVIL ACTION  
COMPLAINT AND JURY DEMAND**

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